

*United States Federal Trade
Commission*

*Toyota Dispute Settlement Program
Audit*

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Introduction

This 2002 audit of Toyota's Customer Arbitration Process is performed pursuant to the 1975 federal warranty law, the Magnuson-Moss Warranty Federal Trade Commission Improvement Act and Rule on Informal Dispute Settlement Procedures, 16 C.F.R. Part 703 (hereafter referred to as Rule 703).

Claverhouse Associates, a firm specializing in arbitration, mediation, and program auditing, performed the audit, which was conducted under the supervision of Kent S. Wilcox, President and Senior Auditor. The statistical survey was conducted by the Center for Survey Research, a division of the Institute for Public Policy and Social Research at Michigan State University.

Arrangements to conduct the audit were initiated by an invoice submitted in early 2002.

SECTION I

Compliance Summary

This is the second Claverhouse Associates independent annual audit of Toyota's sponsored national third-party informal dispute resolution mechanism, called the Dispute Settlement Program (DSP), as it is administered by the National Center for Dispute Settlement.

Overall Toyota's Dispute Settlement Program Evaluation

Toyota's third-party dispute mechanism (Dispute Settlement Program), as administered by the National Center for Dispute Settlement (NCDS), is, in our view, in substantial compliance with the requirements of the Magnuson-Moss Warranty Federal Trade Commission Improvement Act and Rule on Informal Dispute Settlement Procedures, 16 C.F.R. Part 703.

The three regions audited (Pennsylvania, Oklahoma, and New York) all administer the arbitration program(s) in compliance with Rule 703. Details of the field audits and any minor irregularities found are discussed in Section III of this report.

Our random sample survey confirmed the overall validity of the statistical indexes created by the National Center for Dispute Settlement.¹ Our original survey sample consisted of 750 closed cases, of which we completed surveys for 303 customers. As we have found in other audits, surveyed customers tended to report favorably on the program when the results of their cases were, in their view, positive. Conversely, those who received no award, or received less than they expected, were more likely to report dissatisfaction with the DSP. As has been true in most audits we have conducted for various programs, the few statistically significant differences between the figures reported by the DSP and the survey findings were deemed to be easily understandable and do not suggest unreliable reporting by the program. For a detailed discussion, see the survey section of this report.

Arbitrators, DSP personnel, and regulators we interviewed at both the state and federal jurisdictions viewed training for arbitrators as an important component of the program. The training provided for the DSP arbitrators advances many of the DSP objectives. Providing such training is, in our view, consistent with the broad regulatory requirement for fairness. The training component, in our view, comports with the substantial compliance requirements for a fair and expeditious process pursuant to the federal requirements.

¹ There were, of course, discrepancies in some areas, as we have come to expect, but those we identified are either of no real consequence or are very understandable and without significant regulatory implications. Discrepancies are detailed in the survey section of the report.

SECTION II

Detailed Findings

This section addresses the requirements set forth in 16 C.F.R. Para 703.7, of Public Law 93-637 (The Magnuson-Moss Warranty Act, 15 U.S. C. 2301. et seq.).

After each regulatory requirement is set forth,

² Our objective was to complete 300 interviews from our original sample of approximately 750. Experience demonstrates that completing exactly 300 is not likely. The precise sample size is discussed in detail in the Survey Section of this report.

REQUIREMENT: § 703.6 (a) [Recordkeeping]

- (a) The mechanism shall maintain records on each dispute referred to it which shall include:**
- (1) Name, address, telephone number of the consumer;**
 - (2) Name, address, telephone number and contact person of the warrantor;**
 - (3) Brand name and model number of the product involved;**
 - (4) The date of receipt of the dispute and the date of disclosure to the consumer of the decision.**

FINDINGS:

The information referenced in subsections 1 through 4 is available from the staff of the National Center for Dispute Settlement, who provided us with access to all pertinent information, which is maintained as required. Our inspection of randomly selected case files for each of the three regions validated these findings. The inspections of case files took place at the headquarters of the program's independent administrators. Our review of randomly selected cases drawn from the four-year period 1999-2002 demonstrated that the case files were maintained in 2002 as required.

DISCREPANCIES:

The few administrative irregularities found, while appropriately noted, are relatively inconsequential and do not pose any serious undermining of the program's *substantial compliance* status. The DSP meets this regulatory requirement and any inconsistencies we found were of the minor and

files as a first step. The obvious impracticality of that places such a review beyond the scope of the audit.

Information required in subsection 8 can be found on the *Arbitration Data Entry* form used by NCDS. This form also contains the essence of the decision along with most other information pertinent to the case.

³ The warrantor's intended actions are a basic part of the program and are generally applicable to all cases. All decisions rendered by arbitrator(s) will be honored by Toyota, thereby negating any necessity for providing a document in each individual file.

These indices are maintained by Mr. Brian Dunn, Director of Dispute Settlement Services, housed at the NCDS headquarters in Dallas, Texas.

The audit includes a review and assessment of a data printout for the calendar year 2002.

The *Toyota DSP Statistics* identifies 3,069 DSP disputes filed for 2002. Of these, 2,353 were eligible for DSP review, and 716 were determined by the DSP to be out-of-jurisdiction. Of the in-jurisdiction closed cases, NCDS reports that 1,900 were arbitrated⁴ and 453 were mediated.⁵ There were 1,515 arbitrated decisions which were reported as “adverse to the consumer” per § 703.6 (E) representing 79.7% of all arbitrated cases.

The *2002 Toyota Master Model Report* lists 23 brand categories. This report breaks down the DSP cases associated with each brand category.

Indices are complete and consistent with all requirements. Some of the data included in these reports are compared with the findings of our sample survey discussed in the Survey Section of this report.

DISCREPANCIES:

None

REQUIREMENT: § 703.6 (c)

(c) The mechanism shall maintain an index for each warrantor as will show: (1) All disputes in which the warrantor has promised some performance (either by settlement or in response to a mechanism decision) and has failed to comply; and (2) All disputes in which the warrantor has refused to abide by a mechanism decision.

FINDINGS:

Toyota reports that there were no such cases in 2002. Concerning subsection 2, the auditors are advised by NCDS that there is no reported incidence in which Toyota failed or refused to abide by a board or arbitrator decision. As a matter of general corporate policy, Toyota agrees to comply with all DSP decisions. This information is supplied as part of Toyota’s Annual FTC -703.6 (c) (1) and (2) Report.

DISCREPANCIES:

None

REQUIREMENT: § 703.6 (d)

⁴ This number is not aggregated in the statistical reports provided for the audit. We arrived at this number by summing items (1- 4) listed on the DSP mandated statistical report.

⁵ The term “mediation” in the DSP context does not necessarily imply that a neutral third-party assisted the parties in resolving a warranty dispute, but rather that the dispute was settled prior to an arbitrator rendering a decision.

DISCREPANCIES:

None

REQUIREMENT: § 703.6 (f)

THE MECHANISM SHALL RETAIN ALL RECORDS SPECIFIED IN PARAGRAPHS (a) - (e) of this section for at least 4 years after final disposition of the dispute.

FINDINGS:

(a) All of the information listed in the 12 subsections detailed in the previous section [§ 703.6 (e)] is maintained for the required four years. Any inconsistencies found

Each audit provided for in paragraph (a) of this section shall include at minimum the following (1) evaluation of warrantor's efforts to make consumers aware of the Mechanism's existence as required in 703.2 (d);

(d) The warrantor shall take steps reasonably calculated to make consumers aware of the Mechanism's existence at the time consumers experience warranty disputes.

FINDINGS:

The essential feature of both regulatory requirements cited above is timing. In our review, therefore, we give emphasis to effo

⁶ The *Toyota Dispute Settlement Program* pamphlet actually refers here to the *Toyota Owner's Manual Supplement*, but it appears they mean the *Owner's Warranty Rights Notification* booklet. It's a mere administrative oversight, but customers could easily be confused. Fortunately the theoretical problem is mitigated by virtue of the second reference to a toll-free telephone number to Toyota's Customer Assistance Center where customers may obtain a *Customer Claim Form*.

Our dealership experiences in the Oklahoma area were mixed. One of the three dealerships we visited gave us accurate information about the DSP, showing us a DSP brochure and pointing out the pages which included information about the program. Two dealerships, however, were of no help whatever and said they had no information to provide to a customer with a current warranty dispute about options for getting a refund or replacement. These two dealers were willing to provide repair assistance, but volunteered nothing about the DSP. In one instance, we went so far as to ask if arbitration was an option. The response was that arbitration can be used only by going through the dealer, an inaccurate statement.

In Oklahoma we visited the following dealerships:

Jim Norton Toyota
9809 S. Memorial
Tulsa, Oklahoma 74133

Riverside Toyota
10338 East 11th Street
Tulsa, Oklahoma 74128

Doenges Toyota
1901 SE Washington Blvd.
Bartlesville, Oklahoma 74006

Our dealer visits in New York were uniformly discouraging in terms of the program for

warranty-related problems. This facet of the program operates consistent with § 703.2(d) which allows:

703.2 (d)... Nothing contained in paragraphs (b), (c), or (d) of this section [notice requirements] shall limit the warrantor's option to encourage consumers to seek redress directly from the warrantor as long as the warrantor does not expressly require consumers to seek redress directly from the warrantor. The warrantor shall proceed fairly and expeditiously to attempt to resolve all disputes submitted directly to the warrantor.

This part of the DSP received a rather varied assessment. The information dissemination methods employed by Toyota together with the number of applications filed in 2002 (3,069) demonstrate that, unquestionably, many Toyota customers were made aware of the program, and for these customers, at least, access is obvious.

On the other hand, our dealer inspections in several parts of the country showed a general lack of knowledge on the part of the dealer service department employees about the DSP, and in some cases, ignorance of its very existence.

As with most programs, our visits to dealerships suggested that customers who seek assistance from their salespersons are also unlikely to receive any useful information about the DSP. Few of the salespeople we interviewed appeared to have any knowledge of the DSP or arbitration options in general.

We feel obligated to reiterate that the party who is in the best position to communicate with customers at most junctures in the warranty repair context is the servicing dealer. Unfortunately, dealers who wish to ignore their role in facilitating "fair and expeditious" warranty dispute resolution may do so with regulatory impunity, notwithstanding the many demonstrated efforts of Toyota.

We note here that manufacturer's difficulties in complying with this requirement are related in some respects to uncertainty as to the regulation's intent about when the customer is to be informed. A better information dissemination strategy could be developed if regulators provided manufacturers with an operational definition of the phrase, " ... **at the time consumers experience warranty disputes.**"

DISCREPANCIES:

None, with the qualifier given immediately above as a caveat.

REQUIREMENT: § 703.7 (b) (3)(I)

Analysis of a random sample of disputes handled by the Mechanism to determine the following: (I) Adequacy of the Mechanism's complaint and other forms, investigation, mediation and follow-up efforts, and other aspects of complaint handling; and (ii) Accuracy of the Mechanism's statistical compilations under 703.6 (e). (For purposes of this subparagraph "analysis" shall include oral or written contact with the consumers involved in each of the disputes in the random sample.)

FINDINGS:

The FINDINGS for this section are arranged as follows:

- (1) **Forms**
- (2) **Investigations**
- (3) **Mediation**
- (4) **Follow-up**
- (5) **Dispute Resolution**

FINDINGS:

1) Forms

The auditors reviewed most of the forms used by each regulated component of the Toyota Dispute Settlement Program administered by the National Center for Dispute Settlement.

The many forms used by DSP comprise an important aspect of the arbitration program. The forms we reviewed are "user friendly," well balanced, and providing sufficient information to properly inform the parties without overwhelming them with non-essential paperwork. Overall, the DSP forms promote efficiency and assist the program in meeting the stated objective of facilitating fair and expeditious resolution of disputes. We found the forms used by NCDS' DSP (Toyota) program that we reviewed well within the regulatory expectations.⁷

DISCREPANCIES:

NONE

NCDS general policies for the Toyota DSP are set forth in the pamphlet provided to each applicant for arbitration. Some additional policies are printed in the arbitrator training manual and appropriately arranged in sections which are indexed by subject matter.

In summary, the numerous forms used by the DSP are in substantial compliance with the federal regulatory requirements.

2) Investigations

This facet of the arbitration program is governed by section 703.5 [c] (Mechanism's Duty to Aid in Investigation).

⁷ We note that the *Customer Claim Form* solicits some information that raises questions, in our minds, about the purpose and applicability to the arbitration process. For example, "Are your loan payments current? Yes - No." We are hard-pressed to see what this question might have to do with the arbitrator's ability to render a decision or on NCDS' ability to process the matter. Moreover, § 703.5 (c) says: "The Mechanism shall not require any information not reasonably necessary to decide the dispute."

Field audits, monitoring of arbitration hearings, and interviews with arbitrators and DSP staff found only a limited number of requests by arbitrators for technical information, but such information is provided by Toyota on request.

We included arbitrator requests for Technical Assessment under this investigative

Other areas to be investigated include:

number of repair attempts;

length of repair periods; and

possibility of unreasonable use of the product.

Customers provide some information on these subjects on the DSP application and Toyota provides it on the NCDS form entitled, *Manufacturer's Response Form*. The forms, however, do not solicit the same information from all parties.

The customer application form does not, for example, ask for information about the issue of possible misuse or abuse of the vehicle. Customers should know that the possibility of abuse or misuse of the vehicle may become a significant issue in the arbitrator's decision process so that they can present information accordingly. The company reports may include information on this topic whenever they think it is

investigation is enough?" In our view, more inquiries in the initial phase of the arbitration process would enhance the process, but we are unwilling to assert that this concern threatens compliance.

The methods currently employed by the DSP clearly result in a useful collection of pertinent information, but it is also clear that there is opportunity to gather significantly more valuable information at virtually no extra cost.

3) **Mediation**⁸

This facet of the arbitration program was historically carried out exclusively by the manufacturer or its dealers. The NCDS/Toyota process attempts to mediate the case prior to arbitration by having a trained staff person contact the customer and Toyota where the facts as they receive them appear to warrant. When mediation fails to result in a settlement, the matter is arbitrated and a decision rendered.

The mediation function envisioned by rule 703 is governed, at least in part, by section 703.2(d) which allows:

... Nothing contained in this subchapter shall limit the warrantor's option to encourage consumers to seek redress directly from the warrantor as long as the warrantor does not expressly require consumers to seek redress directly from the warrantor. The warrantor shall proceed fairly and expeditiously to attempt to resolve all disputes submitted directly to the warrantor.

FINDINGS:

After a case is opened, the manufacturer generally intercedes in an attempt to resolve the dispute to the customer's satisfaction prior to arbitration. Detailed records are kept as required by § 703.6. This information is contained in the case files maintained by NCDS.

This audit assesses the mediation function only in terms of its impact on the requirement to facilitate fair and expeditious resolution of disputes. All indications are that the mediation function meets the minimum requirements for fair and expeditious resolution of disputes. Mediation is voluntary and in no way is intended to impede or delay a customer's access to arbitration. The degree to which performance of mediated resolutions conforms with time limit requirements is reviewed in the survey section of this report.

4) **Follow-up**

⁸ Mediation does not necessarily imply the use of a neutral third-part mediator, but rather means the case has been settled prior to the arbitrator rendering a decision.

⁹ Each facet of the DSP has Automotive Service Excellence (ASE) certified mechanics available to provide independent inspections to resolve conflicts of facts as presented by the parties. ASE is a private

¹⁰ Currently, NCDS arbitrators are provided a per diem allowance of \$100.00 a hearing plus reimbursement for any mileage expenses incurred.

¹¹ While state automobile warranty statutes vary in the manner in which they treat presumptive language, it is nonetheless a general principle that statutory presumptions give guidance under a specific

Overall, the DSP members demonstrate a clear commitment to providing fair and expeditious resolution of warranty disputes.

DISCREPANCIES:

None

SECTION III

Field Audit of Three Regional Areas

I. Pennsylvania

A. Case Load and Basic Statistics

In Pennsylvania, NCDS handled 107 DSP cases in 2002 of which 23 (21.4%) were "no-jurisdiction" cases. There were 77 cases arbitrated (91.6% of in-jurisdiction cases), and 7 (8.3%) of in-jurisdiction cases) were mediated. The average number of days for handling a 2002 case in the Pennsylvania region was 32 days, the same as the number of days for the nation.

B. Recordkeeping, Accuracy and Completeness

We requested a random sample of 50 case files drawn from all cases closed during the audit period and examined them to determine whether they were complete and available for audit. Generally, the records were complete and available for audit.

The results of the inspection of the random sample of case file folders are detailed below:

§ 703.6 (a) (1-12)

(a) The Mechanism shall maintain records on each dispute referred to it which shall include:

- 1) Name, address and telephone number of the consumer.**
- 2) Name, address and telephone number of the contact person of the Warrantor.**
- 3) Brand name and model number of the product involved.**
- 4) The date of receipt of the dispute and date of disclosure to the consumer of the decision.**
- 5) All letters and other written documents submitted by either party.**

FINDINGS:

The auditor examined the case file folders extracted from all 2002 "in-jurisdiction" case files.¹² We examined each sample file with respect to the items enumerated in subsections 1 through 5, with the following results:

- 1) All case files contained the customer's name, address, and telephone number.
- 2) The requirement is met. The name and address of the warrantor's contact person is included with the initial correspondence that the customer receives from the program. In addition, the Regional office contact address and phone number is included in each Owner's Manual that accompanies all new vehicles

¹² Where there were at least 50 or more case files, we reviewed them. Otherwise, we simply examined all case files for the state.

when they are delivered. The contact person is so generally known as to not require it to be placed in each individual case file.

3) All case files inspected contain the make and vehicle identification number (VIN) of the vehicle. It is usually found in the customer application form, the richest source of information within most files, but the vehicle make and VIN is often located in documents throughout the file. As a result, cases are seldom, if ever, delayed because the customer has failed to provide the VIN when filing their application.

4) All case files inspected contain this information.

5) Many files contained letters and additional documents, but since there is no standard by which to measure this item, we determined this subsection to be "not applicable."

§ 703.6 (a) (1-12) [Continued]

6) All other evidence collected by the Mechanism relating to the dispute, including summaries of relevant and material portions of telephone calls and meetings between the Mechanism and any other person (including consultants described in section 703.4(b) of this part);

7) A summary of any relevant and material information presented by either party at an oral presentation.

8) The decision of the members including information as to date, time and place of meeting, the identity of the members voting; or information on any other resolution;

FINDINGS:

All files for cases that were arbitrated contained the information required by sections six and eight. Oral presentations are a basic component of the NCDS program in this

part of Toyota to ask, among other things, whether any required performance has taken place. Customers are asked to return the survey to the office of NCDS. As noted elsewhere, we found few returned survey forms in the case files. In the past, we have stated that the absence of performance verification forms in the case file does not constitute a regulatory inconsistency since performance verification information may not be available from the customer. By mailing a performance verification survey NCDS goes as far as can be expected in determining whether arbitration decisions are, in fact, being performed. It seems entirely appropriate for the program to assume performance of the decision has taken place when the customer performance survey is not returned. For those who may be skeptical about such important assumptions, it should be remembered that even if a manufacturer engaged in a programmatic attempt to avoid performing arbitration decisions, that fact would, of course, emerge in the context of our national random survey of customers who have used the program. Performance verification status should and does appear in the case file as is indicated by sections 11 and 12 below.

11) Copies of follow-up letters (or summaries of relevant and material portions of follow-up telephone calls) to the consumer and responses thereto; and

12) Any other documents and communications (or summaries of relevant and material portions of oral communications) relating to the dispute.

FINDINGS:

Section 11 above is not applicable for purposes of the audit because there is no practical means by which to verify the completeness and accuracy of such possible additions to the files. Section 12, however, appears to mandate that a summary form be created whenever the arbitrator receives an oral communication that may have any bearing on the matter in dispute from either party. Of course, most such communications come in the form of oral presentations by the parties at the hearing, in which case the communications are summarized in the arbitrator's decision. All summaries are now included in the case file.

CONCLUSIONS:

The NCDS program's record keeping policies and procedures, with the alluded to necessary modifications, are in substantial compliance with the federal Rule 703 requirements.

C. Case File Records (4 yrs. 1999-2002)

A random sample of 50 case numbers from the years 1999 through 2002 was drawn from NCDS' data base program, and in our field inspection, we checked the sample case files at the NCDS national office in Dallas to verify that they were being maintained per requirement § 703.6(f). In addition, a visual inspection was made of the entire four-year accumulation of case files as required by the same section.

The closed files are stored in a discrete area within in the NCDS office. The files we viewed appeared intact and were readily available for inspection. The random sample inspection of 50 case files drawn from all cases in the four-year universe of cases validated the program's maintenance of these records as required.

The hearing was efficiently conducted even though 40 minutes late.

iv. Hearing

This arbitrator appeared to be committed to the fair and expeditious resolution of warranty disputes in the hearing process. It should be noted, however, that the arbitrator referred to the Toyota representative on the telephone by her first

II. Tulsa, Oklahoma

A. Case Load and Basic Statistics

In Oklahoma, NCDS handled 19 DSP cases in 2002 of which 6 (31.5%) were "no-

¹³ There was one case reported as "pending," which accounts for the apparent missing case when the other categories are summed and compared with the total number of cases reported.

¹⁴ See 16 C.F.R., § 703.6 (f)

¹⁵ Since there were only 19 Oklahoma cases reported for 2002, we simply examined them all.

FINDINGS:

9) A copy of the disclosure to the parties of the decision.

FINDINGS:

All files for cases that were arbitrated contained the required information.

10) A statement of the warrantor's intended action(s);

FINDINGS:

The warrantor's intended action(s) and performance are inextricably linked. Thus, we validate this item in terms of performance verification. Performance verification is a function carried out by NCDS. This office sends a survey to the customer following receipt of the customer's acceptance of those decisions mandating some action on the part of Toyota to ask, among other things, whether any required performance has taken place. Customers are asked to return the survey to the office of NCDS. As noted elsewhere, we found few returned survey forms in the case files. In the past, we have stated that the absence of performance verification forms in the case file does not constitute a regulatory inconsistency since performance verification information may not be available from the customer. By mailing a performance verification survey NCDS goes as far as can be expected in determining whether arbitration decisions are, in fact, being performed. It seems entirely appropriate for the program to assume performance of the decision has taken place when the customer performance survey is not returned. For those who may be skeptical about such important assumptions, it should be remembered that even if a manufacturer engaged in a programmatic attempt to avoid performing arbitration decisions, that fact would, of course, emerge in the context of our national random survey of customers who have used the program. Performance verification status should and does appear in the case file as is indicated by sections 11 and 12 below.

11) Copies of follow-up letters (or summaries of relevant and material portions of follow-up telephone calls) to the consumer, and responses thereto; and

12) Any other documents and communications (or summaries of relevant and material portions of oral communications) relating to the dispute.

Section 11 above is not applicable for purposes of the audit because there is no practical means by which to verify the completeness and accuracy of such possible additions to the files. Section 12, however, appears to mandate that a summary form be created whenever the arbitrator receives an oral communication that may have any bearing on the matter in dispute from either party. Of course, most such communications come in the form of oral presentations by the parties at the hearing, in which case the communications are summarized in the arbitrator's decision. All summaries are now included in the case file.

CONCLUSIONS:

The NCDS program's record keeping policies and procedures are in substantial compliance with the federal Rule 703 requirements.

C. Case File Records (4 yrs. 1999-2002)

¹⁶ The four-year requirement includes the year 2002, but 2002 files are examined separately as part of a more thorough inspection of each file's contents.

¹⁷ The dealership employee assisted at the onset of the hearing by setting up the telephone connection to the Toyota manufacturer's representative and then left the hearing.

This arbitrator said that she allows all observers at DSP meetings (hearings) although the room used for the hearing was too small to allow observers.

iii. Efficiency of Meeting

The arbitrator's case file was complete with all requisite documents. The arbitrator demonstrated that she generally knows how to properly conduct a hearing.¹⁸ She addressed the parties, giving a brief overview of the process, but failed to provide a case opening statement setting forth the particulars of the dispute and the customer's requested relief.

The meeting began at 9:00 am as scheduled.

iv. Hearing

The hearing was, with only one exception, properly conducted. Both parties were afforded an uninterrupted opportunity to present their versions of the case. Following each party's presentation, the other party was given an opportunity to clarify or challenge, as was appropriate. The arbitrator conducted a test drive at the conclusion of the hearing and informed the parties that the hearing was concluded without necessitating a reconvening of the parties after the test drive.

Unfortunately, the arbitrator left unchallenged a facet of the hearing in which the Toyota manufacturer's representative asked the customer a question in a cross-examination manner about whether some facet of the case was included on the claim form and then proceeded to dictate to the arbitrator that any subject not detailed on the Claim Form could not be discussed during the hearing. This was problematical in two respects: first, the manner in which this interchange took place left a clear impression that the manufacturer's representative as one of the disputing parties is actually empowered to determine what evidence is allowable at the hearing and what is not; and,

¹⁸ At the same time, the arbitrator's demeanor suggested to the auditor that it was the Toyota representative who was really in charge of the hearing. The problem was substantively harmless to the ultimate disposition of the case, but there was a definite "appearance" problem. As a result of discussions with the arbitrator, it appears that the issue was a one-time incident with no regulatory implications.

v. Board/Arbitrator Decisions

We reviewed this case's decision and a sample of decisions for the region while conducting our on-site visit to the Dallas, Texas, headquarters of NCDS. In the compliance summary (Section I of this report), we discussed problems with some boilerplate language which, while important, need not be repeated here. The decision in this case was consistent with the regulatory requirements with the qualifier discussed above.

Conclusion:

The DSP, as it operates in the Oklahoma region, is in "substantial compliance" with Rule 703. The NCDS administrative staff demonstrated a clear commitment to ensuring fair and expeditious resolution of warranty disputes. The administrative staff is clearly dedicated to the program's mission and

III. New Windsor, New York

A. Case Load and Basic Statistics

The New York Region generated 189 cases in 2002 of which 57 were determined to be "not-in-jurisdiction" cases. The program also reports 24 mediated cases and 108 arbitrated cases. The average days for handling a 2002 case for this Region is 33. This compares with an average of 32 days handling nationwide.

The New York Regional field audit includes a review of a hearing held in New Windsor, New York, and interviews with the principal people involved in the hearing. In addition, we reviewed case files for New York, which are stored at national headquarters of the National Center for Dispute Settlement (NCDS), in Dallas, Texas.

During our on-site review at the Dallas, Texas, headquarters, we visually inspected the warehousing of all DSP case files for the required four-year period.¹⁹ The four-year accumulation of case files was available for inspection per all regulatory requirements. In addition, the staff at NCDS were efficiently housed and provided with up-to-date equipment.

We requested a random sample of 50 cases drawn from all cases closed during the audit period and examined the cases provided to determine whether they were complete and available for audit. Files were reviewed for accuracy and completeness. The findings of that review are set forth below.

B. Recordkeeping Accuracy and Completeness

§ 703.6 (a)(1-12)

(a) The Mechanism shall maintain records on each dispute referred to it shall include:

- 1) Name, address and telephone number of the consumer;**
- 2) Name, address and telephone number the contact person of the warrantor;**
- 3) Brand name and model number of the product involved.**
- 4) The date of receipt of the dispute and date of disclosure to the consumer of the decision;**
- 5) All letters and other written documents submitted by either party.**

FINDINGS:

We examined a sample of case files extracted from all "in-jurisdiction" case files closed during the audit period. We reviewed these files for the items enumerated in subsections 1-5 with the following results:

¹⁹ See 16 C.F.R., § 703.6 (f)

- 2) The requirement is met. The name and address of the warrantor's contact person is included with the initial correspondence that the customer receives from the program. In addition, the manufacturer's contact address and phone number is included in each Owner's Manual that accompanies all new vehicles when they are delivered. The contact person is so generally known as to not require it to be placed in each individual case file.
- 3) All case files inspected contain the make and vehicle identification number (VIN) of the vehicle. This information is generally found in the customer application and in a number of other documents in the file. As a result, cases are rarely delayed simply because the customer fails to include the VIN in the application.
- 4) All case files inspected contain this information. Not all cases necessitate a decision letter, but where a decision was rendered, the appropriate notification letter was present.

²⁰ Some cases do not result in a decision. The case may end in a mediated settlement that came about after the case had been received by the DSP but prior to the hearing to decide the matter.

FINDINGS:

The warrantor's intended action(s) and performance are inextricably linked. Thus, we validate this item in terms of performance verification. Performance verification is a function carried out by NCDS. This office sends a survey to the customer following receipt of the customer's acceptance of those decisions mandating some action on the

The older case files are stored at the NCDS headquarters office in Dallas, Texas. The closed files are stored in a discrete area within the NCDS office and are available for review.

D. Program Records

i. Agendas and Minutes of Arbitration Hearings

The four-year accumulation of case files is kept in one location and was complete and readily available for audit. The DSP arbitrator completes a separate form for each hearing and a copy of this form is maintained at the NCDS headquarters office. Information included in each case file includes: a) meeting place, date, and time; b) arbitrators' names; c) customer name and case

SECTION IV

Arbitration Training

There is no specific language in Rule 703 requiring the training of arbitrators. There are, however, several general requirements for ensuring that the program do whatever is necessary to provide customers with an opportunity for fair and expeditious resolution of warranty disputes.

Arbitration training is currently seen by many as a fundamental to ensuring that a program is fair to all sides, and some recent state regulations require arbitrator training. Consequently, programs have initiated the training process even in states that do not specifically require it. Because such training has become a basic part of the DSP, it is incorporated into this report as part of the program's efforts to provide for fair and expeditious resolution of disputes.

FINDINGS:

The arbitration training session we monitored was conducted at the DFW Lakes Hilton in Grapevine, Texas, June 20 - 22, 2003. As noted in the introduction, certain facets of the audit are conducted in the year following the audit period; otherwise, there would sometimes be no means available for review.

This national training was conducted by NCDS staff. One presenter dealt primarily with legal matters, another with hearing process issues, and an NCDS staff person addressed program procedural issues. These presentations were augmented by the trainees' being given several opportunities to engage in role playing exercises.

Training has begun to stress that in scheduling hearing sites the program typically takes advantage of applicable dealerships for holding hearings with the important caveat that using the dealership is not required if either of the parties objects. Moreover, it is emphasized that, where necessary, the program will pay for alternate space.

The importance of reviewing the basic facts of the case at the beginning of deliberations was discussed, including each dimension of the customer's complaint as well as the degree to which the parties are in disagreement on central facts. Presenters also discussed the importance of addressing each dimension of the customer's concerns when writing the decision.

Trainees engaged, at various intervals, in practical problem solving centering around scenarios that are likely to arise within the DSP program. Role-playing material was appropriately interspersed among lecture material with emphasis on conducting the arbitration hearing. Indeed, there was more time allotted for practical application than was true in the past.

There was a detailed discussion concerning common problems associated with repurchases and replacements of automobiles, including the issue of applying mileage offsets and how to handle demonstration vehicles with more than a few miles registered on the odometer at time of purchase.

The presentation of the legal issues was professional and accurate. Particular emphasis was given to this critical subject area this year, and the result appeared to be very positive as regards trainees' understanding of their role. An additional feature this year focused on the importance of arbitrators' neutrality and the related issue of making

appropriate disclosures. Emphasis was given to disclosures that may be important but are not necessarily disqualifying.

Overall, the training appears to have left trainees with an opportunity to develop a good grasp of their responsibilities as arbitrators. As was true at last year's training, trainees were presented with information that makes it clear that customers who purchase a vehicle with a substantial non-conformity that the manufacturer fails to cure in a

²¹ Also addressed was the Act's related administrative rules commonly known as Rule 703.

ARBITRATION TRAINING RATING SYSTEM

- | | |
|---|-----------|
| 1) Adequacy of training materials | VERY GOOD |
| 2) Accuracy of informational materials | VERY GOOD |
| 3) Thoroughness of material | VERY GOOD |
| 4) Quality of presentation | VERY GOOD |
| 5) Apparent understanding and likely comprehension of the information | GOOD |
| 6) Utility of materials for later referencing | EXCELLENT |

SECTION V

Survey and Statistical Index Comparative Analyses

TOYOTA DISPUTE SETTLEMENT PROGRAM PROGRAM INDICES

The Federal Trade Commission (FTC) regulates informal dispute resolution programs, such as that operated by Toyota, under FTC Rule 703.6(e). The rule mandates disclosure of statistics about the outcomes of warranty disputes and warrantor compliance with settlements and awards. The purpose of this section of this audit is to verify the statistics provided by Toyota for the year 2002.

A consumer who wants to have a warranty dispute settled by the Dispute Settlement Program (DSP) must: (1) be the owner of a vehicle that meets certain specified age and mileage requirements; and, (2) agree to forego any legal action while the case is open with the DSP. If a customer applies to the program but does not meet these requirements, the case is considered to be “out-of-jurisdiction.” Cases that are “out-of-jurisdiction” are counted as “closed.” A consumer who is not satisfied with the jurisdiction decision of the program can request that the case be reviewed by the board, but the board is not obligated to hear the request.

If a consumer who files with the DSP is able to reach an agreement with Toyota prior to an arbitration hearing, the dispute is said to have been “mediated” or “prior resolved” by the staff. If the consumer and Toyota cannot reach an agreement, the case is arbitrated by the DSP. Arbitration cases can result in the granting of an award requiring Toyota to repair or replace the vehicle or, to issue a cash reimbursement. On the other hand, the consumer may receive an adverse decision in which there is no award of any kind.

FTC regulations require arbitration decisions to be rendered within 40 days from the date the DSP office receives the application. Manufacturers must comply with both mediated and arbitrated decisions within 30 days of the decision.

FTC Rule 703.6(e) requires warrantors to report statistics (also referred to as indices) in 13 areas. These include such things as: the number of mediated and arbitrated warranty disputes in which the warrantor has complied with a settlement or award; the number of cases in which the warrantor did not comply; the number of decisions adverse to the consumer; the number of “out-of-jurisdiction” disputes; and the number of cases delayed beyond 40 days. In addition to questions designed to assess the validity of DSP statistics, our survey includes questions that allow consumers to evaluate various aspects of the program.

To determine the accuracy of the DSP’s warranty dispute statistics and to gather evaluation information about the program, Claverhouse Associates contracted with the Survey Research Division of the Institute for Public Policy and Social Research (IPPSR) to conduct a survey of a randomly selected sample of consumers throughout the U.S. who filed disputes with the DSP during 2002. The primary focus of this survey is to determine whether consumers’ recollections or records of what happened in their cases match the data compiled by the DSP. The question is not whether an individual’s recollections match the data in the DSP’s records but rather whether the aggregate proportion of consumers’ recollections agrees with the outcomes reported to the FTC.

ABOUT THE STUDY

The Claverhouse study is based on 303 respondents from a sample of 738 cases randomly drawn from the universe of 2,272 cases closed in 2002. A customer who had filed more than one case was asked to refer to the most recent case in answering the survey.

The data was collected through a mailed, self-administered questionnaire. IPPSR used methodology designed by Professor Donald Dilman of the University of Washington, a nationally known expert in the field of self-administered questionnaires. Since its inception, IPPSR has used this methodology for all of its self-administered survey projects.

The initial mailing on March 18, 2003, contained the survey, a cover letter, and a postage-paid return envelope. The cover letter explained the purpose of the survey and the random selection process. It also explained that participation was voluntary but encouraged the recipient to participate. On March 25, 2003, a combination thank-you and reminder postcard was sent to the entire sample.

Each respondent was assigned a unique number to allow the project staff to monitor the status of each survey. Thus, IPPSR staff was able to determine who had returned completed questionnaires and which questionnaires were returned by the post office because of invalid addresses.

On April 22, 2003, IPPSR staff mailed another questionnaire to those who had not returned

²² This is the sampling error when the responses divide roughly 50-50 on a given question and when there are 303 cases, given a 95 percent confidence interval (i.e., there is a 1-in-20 chance that the actual proportion in the population falls outside the range of 50 ± 5.5 percent). The magnitude of the sampling error is determined partly by sample size (a larger sample size yields a smaller sampling error) and also, to some extent, on how evenly responses are divided among alternative answers.

interval. This difference might occur if tho

Insert fig 1

FTC Rule 703.6(e)4-7 requires warrantors to report the proportion of arbitration decisions with which they have complied, the proportion with which they have not complied, and the proportion for which the date of compliance has not yet passed. They must also report the proportion of decisions adverse to the consumer.

Table 4
Outcomes of Arbitrated Cases
Comparison between Claverhouse Survey and DSP Indices 2002

Outcome	Claverhouse	DSP
	Percentage (Number)	Percentage (Number)
<i>Arbitration Award Granted and Accepted</i>		
Case decided by board and warrantor has complied	87.9% (58)	90.3% (348)
Case decided by board and warrantor has not complied	12.1% (8)	9.6% (37)
<i>Total – Award Granted and Accepted</i>	100.0% (66)	100.0% (385)
Arbitration Award Granted/Not Accepted	16.5% ^a (14)	0.0% ^a 0
Arbitration Decision Adverse to Consumer	64.9% ^b (148)	79.7% ^b (1,515)
<i>Total Arbitrated Decisions</i>	228 ^c	1,900

- a). Percentage of awards granted.
- b). Percentage of all arbitrations.
- c). Includes only cases for which there was no missing data.

In the comparisons involving awards granted and accepted, the differences between survey results and DSP indices are not statistically significant. The percentages of cases in which an award was granted and accepted and the warrantor has complied and those in which the warrantor has not complied are statistically the same. Of those consumers who reported receiving an award, however, 16.5% reported that they had rejected the award offered; the warrantor reports no such cases. The difference is statistically significant. In addition, in the proportion of cases in which the arbitration decision was adverse to the consumer (i.e., the consumer received no award), the difference between the survey results (64.9 percent of those with arbitrated cases report adverse decisions) and the DSP indices (79.7 percent of all arbitrated decisions adverse to the consumer) is significant. We do not consider this important, however, because the difference is in favor of the consumer. All respondents whose cases were arbitrated were asked whether they had pursued their cases further after the arbitration decision. Of those who replied, 26.4 percent (65) of survey respondents with arbitrated cases replied that they had pursued their cases further after the decision. Table 5 shows by what means they pursued their cases.

INSERT FIGURE 2

In addition, only 39.5% of respondents attempted to provide a complete date for reaching a mediated settlement or receiving an arbitration decision. Consumer recollections on whether

Table 7
How Consumers Learned about DSP Availability
Claverhouse Survey

Source of Information	Number	Percent
Toyota Customer Complaints/Toll-free number	94	44.3%
Owner's manual/warranty information	93	43.9%
Toyota dealership	54	25.5%
Friends and family	15	7.1%
Brochures/other literature	11	5.2%
Attorney or other legal source	10	4.7%
Previous knowledge of the program	8	3.8%
Media (TV, Newspapers, etc.)	4	1.9%
Other (Internet, Better Business Bureau, etc.)	4	1.9%
Total	293 ^a	-- ^b

a. These figures represent responses, not respondents, because respondents were allowed to supply more than one answer.

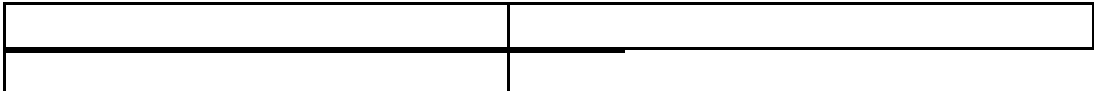
b. Percentages represent the percentage of respondents giving each answer; because respondents could give more than one answer, a total would be meaningless.

The Toyota Company and the dealership were the most likely sources of information about the DSP program. Of those giving this response, 67.7 percent said that the dealer or manufacturer talked with them about the program; 26.4 percent said they were given reading material; only 2.0 percent said they were shown a poster or other material posted in the showroom or repair area.

Survey respondents were also asked about the materials and forms they received from the DSP. Of those who said they recalled receiving the materials, 66.4 percent reported the materials were very clear and easy to understand; 28.5 percent said they had had some problems, but the forms were still fairly easy to understand; 5.1 percent said they were difficult to understand or gave other answers.

In our experience, ease of understanding the forms correlates with the consumers' overall level of satisfaction with the DSP program as expressed when they are asked to rate the overall program on a scale from A to E. Those who find the forms easy to understand generally give the program higher overall grades than those who find the form somewhat difficult or very difficult to understand. We were somewhat surprised to find that not to be the case in this survey. The differences in grades awarded did not vary significant among the three groups.

Respondents were asked to rate the DSP staff on several aspects of performance by assigning a grade of A, B, C, D, or E. Table 8 shows the respondents' ratings.



INSERT FIGURE 3

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INSERT FIGURE 4

CONCLUSIONS

SECTION VI

Audit Related Regulatory Requirements

SECTION VII
Appendix/Codebook